In the High Court of Judicature at Madras

Dated: 19/11/2004

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THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.No.8878 of 1997

The Management of Indotech Electric Company,
(Now known as Indotech Transformers Ltd.)
rep by its Director,
31, Hospital Road, Saidapet,
Madras. ... Petitioner

-Vs-

1. The Presiding Officer,
Principal Labour Court,
Madras.

2. K.Ravichandran
83, Kothavalchavadi Street,
Saidapet,
Madras-600 015. ... Respondents

Writ petition filed under Article 226 of the constitution of India
praying for the relief as stated therein.

For Petitioner: Mr.S.Ravindran
For M/s. T.S.Gopalan & Co.,

For 2nd respondent: Mr.S.Kumarasamy

:ORDER

Writ petition has been filed praying to issue a writ of
certiorari calling for the records of the first respondent in I.D.No.259 of
1994 and quash the award dated 2.7.1996.

2. The case of the petitioner management is that the second
respondent was working with the petitioner company from 7.12.1987 and all of a
sudden, he was dismissed from service on 4.11.1989 and as per the settlement
arrived before the Labour Officer on 31.3.1993, the second respondent was
reinstated into service with continuity of service, but without any backwages
and thus he is working from 1.4.1993. On account of the unfair labour
practice of the petitioner, the employees went on strike from 5.4.1993 to
17.4.1993 and since the second respondent was also a member, the petitioner

management retrenched him from service on the ground that he was a casual and probationer. But, the Labour Court disagreeing with the contention of the management and further finding that the juniors of the second respondent have been confirmed as permanent employees, has ordered reinstatement of service, full backwages and other attendant benefits. Aggrieved, the management has filed this writ petition.

3. During the arguments the learned counsel appearing on behalf of the petitioner/management would submit that in the case of the second respondent his services were not regularised after completion of the probation period and hence his services were terminated as per the order dated 4.11.1993. The learned counsel would further submit that the plea of the victimisation has not been proved before the Labour Court; that the reasons assigned are (i) that the second respondent's juniors are not terminated and they are still in service and therefore the termination is not correct; that only in the case of surplus workmen, which is not the case prevalent in the facts in hand and hence the order of termination is bad; (ii) the management has not informed the workman about his performance; and (iii)thirdly the evidence of management that in the case of supervisor who gave evidence about the unsatisfactory work could not be accepted, as he was not the only supervisor to supervise the work.

4. The learned counsel for the second respondent would submit that there is no need on the part of the management to put workman on notice for termination and for the third point raised, no such unsatisfactory report has been made in the termination order and therefore that ground cannot also sustain on such grounds.

5. In reply, on the part of the learned counsel appearing on behalf of the second respondent he would submit that the second respondent was engaged as casual labourer; that the entire process started on 5 .5.1993; that again he was terminated from service and again he started working from 1.4.1993 but by the impugned order of termination dated 5.5.1993 he was terminated from service of the petitioner/ management.

6. The learned counsel would further submit that it is the question of victimisation that raged supreme before the Labour Court; that there was no unjust act committed on the part of the second respondent;that 15 documents were marked before the Labour Court as Exhibits W1 to W15, which relates to the period 1987-1993; that the Labour Court in appreciation of the evidence placed on record by the workman passed the impugned order. At this juncture, the learned counsel would also cite the following two judgements
(i) In L.MICHAEL & ANOTHER Vs. M/s. JOHNSON PUMPS INDIA LTD (1975 (1) L.L.J. Page 262); and
(ii) In WORKMEN OF M/S. WILLIAMSON MAGOR & CO. LTD., Vs. M/S. WILLIAMSON MAGOR & CO. LTD. & ANOTHER

(AIR 1982 9 [SC] 78: 1982 (1) LLJ 38).

7. So far as the first judgement cited above in 1975 (I) LLJ 262 (supra) is concerned, it is held therein:

"The Tribunal has power and, indeed, the duty to x-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose is to dismiss the employee because he is an evil to be eliminated. But if the management to cover up its inability to establish by an enquiry, illegitimately but ingeniously passes an innocent-looking order of termination simplicitar, such action is bad and is liable to be set aside. Loss of confidence is no new armour for the management; otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court can be subverted by this neo-formula. Loss of confidence in the law will be the consequence of the loss of confidence doctrine."

In the second judgement cited above in AIR 1982 (SC) 78 (supra), the Honourable Apex Court has held:
"Held on facts that although the union had not been able to prove factual mala fide, in this case malice in law and effectual victimisation were obvious due to the fact that unjustified promotions of some junior persons were made superseding, without any reason or necessity, the cases of a large number of senior persons."

8. On such arguments, the learned counsel for the second respondent would seek to confirm the order of the Labour Court, dismissing the above writ petition.

9. In reply, on the part of the learned counsel for the petitioner/management would submit that inefficient of sufficient materials have been placed before the Labour Court and would cite the judgement reported in BHAVANI SHANKAR SHARMA Vs. UNION OF INDIA (1972 (II) LLJ 18 4), wherein it is held:

"Held, there is no justification for upholding the contention that there has been any contravention of Rule 16. The appellant was given an opportunity to make a representation and the Government in its order has said that it has considered his representation as well as his records. The complaint of the appellant is that he was not informed of the reasons for coming to the conclusion that his work was inefficient. The conclusions that an officer's work is inefficient is based on his records as well as the opinion based on his records by the superiors. The inefficiency is something which cannot be concretised. We are unable to hold that the appellant was not given a reasonable opportunity to make a representation against the action proposed to be taken by the Government."

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the arguments of the learned counsel for the petitioner/management and the second respondent as well, it is a case of termination of the services of the second respondent from the petitioner/management as per the impugned order dated 4 .11.1993, but as per the award of the Labour Court dated 2.7.1996 made in I.D.No.259 of 1994 for the reasons assigned therein has ordered the reinstatement of the petitioner with continuity of service and with full back wages and all other attendant

benefits and it is this award of the Labour Court, which is under challenge in the above writ petition.

11. The termination order is one sentence order with no reasons assigned therein. The point for consideration is whether at this juncture that the termination order passed by the petitioner/management is just or reasonable or legal and those questions have been gone into by the Labour Court and the Labour Court having conducted the full enquiry in which on the part of the workman, 15 documents would be marked as Exhibits W-1 to W-15; and on the part of the management only one document viz., Exhibit M-1 (series) would be marked that is the xerox copy of the performance of the appraisal form for the period from June 1993 to October 1993. In fact, the non-speaking one sentence order of termination does not speak anything about the efficiency or inefficiency or for the matter anything concerned with the service or the termination from service of the second respondent and therefore at a later stage the plea has been taken up on the part of the petitioner/management attributing the inefficiency and the same has not been accepted by the Labour Court and in appreciation of the Exhibits W-1 to W-15 placed on record on the part of the workman/2nd respondent herein, rightly ordered reinstatement of the workman/2nd respondent herein with continuity of service and with full backwages and with all other attendant benefits and in consideration of these facts and circumstances and the evidence placed on record coupled with the reasons assigned therein, the Labour Court was able to arrive at a valid conclusion the order of reinstatement of the second respondent with continuity of service with full back wages and with all attendant benefits as per its award dated 2.7.1996 and since on a careful perusal of the award of the Labour Court mentioned supra, this Court is not able to find any illegality, infirmity or inconsistency or patent error of law of perversity in approach and is of the view that the interference of this court sought to be made into the well considered and well merited award passed by the Labur Court, is not only unnecessary but also unwarranted as well and hence the following order.

In result,

(i) the above writ petition does not merit acceptance but becomes liable to be dismissed and is dismissed accordingly; and

(ii) The order passed by the first respondent/Principal Labour Court, Chennai passed in I.D.NO.259 of 1994 dated 2.7.1996 is hereby confirmed;

However there shall be no order as to costs.

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Index:Yes
Website: Yes

Copy to The Presiding Officer,
Principal Labour Court,
Madras.